IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
CRIMINAL APPELLATE SIDE

CONTEMPT OF COURT REFERENCE NO. 1 OF 2005

Vilas Sitaram Dikshit
Metropolitan Magistrare,
Court No.18, Girgaum, Mumbai. ..Petitioner

Vs.

1. Shri Nikhil Wagale
Chief Editor of "Apala Mahanagar"
and "Hamara Mahanagar"
78,Pandurang Building,
178 L.J. Road, Mahim,
Mumbai – 400 016.

2. State of Maharashtra ..Respondents

Mr. R.L. Patil with Mr.Milind Sawant for respondent no.1.
Ms. P.H. Kantharia, APP for respondent no.2-State.

Coram: B.H. Marlapalle & Naresh H. Patil, JJ.

Date : September 22, 2006.

ORAL ORDER (PER B.H. MARLAPALLE, J.):-

1. This is a reference made under Section 15 (2) of the Contempt of Courts Act, 1971 by the learned

Metropolitan Magistrate, 18th Court, Girgaum, Mumbai (the subordinate court for short) and it is reported that the respondent no.1 Shri Nikhil Wagale, Chief Editor of "Apla Mahanagar" and "Hamara Mahanagar", while he was called as a witness and was in the witness box acted in a manner amounting to contempt of court as defined under Section 2(c) of the Contempt of Courts Act, 1971 (the Act for short) on 8/9/2004 at about 4.15 p.m. and, therefore, the learned Metropolitan Magistrate prayed that the said Mr. Wagale be punished under the said Act. Notice was issued by this court on 9/3/2005 to show cause why action under the Act be not initiated. On 6th April, 2005 the respondent no.1 appeared through an advocate and sought time to file reply and accordingly reply has been filed on or about 2nd May 2005. After having considered the said reply and the arguments advanced on behalf of the respondent no.1 by Shri

Patil, the learned Advocate, this court by its order dated 5th July 2005 admitted the petition having been satisfied that prima facie there was a case of contempt of court made out. Liberty was granted to file additional reply.

2. As per the reference, on 8/9/2004 the criminal case bearing No.45/S/1995 berfore the subordinate court was on board and it was for offences punishable under Section 500 read with Section 120-B or Section 34 of I.P.C. The contemnor was in the witness box as a defence witness. Shri V.S. Dixit, the learned Metropolitan Magistrate was recording the evidence of the respndent no.1 and Mr. Amol Vasant Sheelvant was typing the same as dictated to him. The learned Advocate for the accused had completed his examination-in-chief and the witness contemnor was subjected to the cross-examination by the learned

Advocate for the complainant at about 4.00 p.m. and as per the report without there being any reason the contemnor raised his voice and uttered the following sentence in a loud tone:

> "I am not having any faith in this court and I want to move to the higher judiciary for making the complaint against the presiding officer of this court. I am not ready to give the evidence before this court and this court may initiate the contempt proceedings against me." (translated into English from the original Marathi utterances).

3. In the affidavit in reply it is stated that he was under cross-examination at about 3.15 p.m. on 8/9/2004 in the subordinate court and Mr. R.J. Merchant the learned Advocate for the complainant was cross-examining him. As per the contemnor the said Advocate was very aggressive and the questions put by

him were nothing but the insinuations against the witness. He further claims that the learned Metroplitan Magistrate, who was recording the depositions was not recording as was stated by him (respondent no.1) and the recording was not correctly made. He, therefore, requested the learned Metropolitan Magistrate to record the statement strictly as stated before the court. He further claims that the learned Advocate for the complainant was insulting him and the learned Magistrate did not intervene, though he made some oral observations. The respondent no.1 further states that when he was being insulted by the learned Advocate for the complainant, he expected the learned Magistrate to come to his rescue or intervene and stop such questions which were nothing but a personal attack. The learned Magistrate did not come to his rescue and on the other hand he was directed to give answers to the questions put to him by the

complainant's Advocate. He has specifically stated that the learned Magistrate recorded his statement as, "I am aware that one chapter case was filed against Narkar and others" and as per him this statement was not correctly recorded because he was asked two questions relating to the case in which he had come to give evidence and the chapter case alleged to have been filed against the accused by the Advocate for the complainant. He claims that he answered the first question in the affirmative and the second question he answered in the negative, but the court recorded his statement in the affirmative even to the second question. When he requested the learned Magistrate to correct his reply to the second question, as per him, the learned Magistrate felt offended and at this stage some incident had taken place. The contemnor in his affidavit has stated the same in the following words:-

"I respectfully submit that my replies

were not being correctly recorded by the Learned Magistrate and therefore I tried to request that my statements be recorded correctly. I say that it is true that I had to tell the Learned Magistrate that his recording of my statements was not correct. Inspite of my protest, the learned Magistrate continued to record my statements by putting words in my mouth which were not stated by me. As my protest were not having any effect on the Learned Magistrate, I had no alternative but to tell the learned Magistrate that he was forcing me to approach higher authorities for my redressal.In telling the Learned Magistrate I had meant no insult to the Learned Magistrate.The Learned

> Magistrate was annoyed by aforesaid statement and told me that with my attitude, he would be compelled to take contempt proceedings against me."

4. He further claims that at no point of time he had any occasion to utter the words which have been set out in the reference and as per him he only stated that he will have to approach the higher authorities for redressal of his grievance as the learned Magistrate was not recording his statement correctly and when he uttered these words it was the Magistrate who stated that he would be compelled to take contempt proceedings against the respondent. It is admitted that the learned Magistrate stopped the recording of evidence and informed the parties that he did not wish to proceed with the case in such circumstances. He further states that he was in the witness box as an Editor of the daily newspaper and not as the correspondent who had

obtained the news which was published in his newspaper. In any case, he was only requesting the learned Magistrate to record his statement correctly and in doing so he claims that he did not commit any contemtp of the Magistrate' scourt by expressing his feelings before the learned Magistrate.

5. Section 2 (c) of the Act, 1971 defines,

> "criminal contempt" means the publication (whether by words, spoken or wirtten, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which -
>
> (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
>
> (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or

(iii) interferes or tends to interfere with, or obtructs or tends to obstruct, the administration of justice in any other manner;

Charge against the contemnor is that while he was in the witness box on 8/9/2004 before the subordinate court he addressed the learned Magistrate in the following words (verbatim in Marathi);

'मला हया न्यायालयावर विश्वास नाही. आणि। मला आपल्या विरूद्ध वरीष्ठ न्यायालयाकडे तक्रार अर्ज करावयाचा आहे. आणि। मी, हया न्यायालयासमोर साक्ष दयायला तयार नाही. आपण। माझया विरूद्ध कंटेम्प्ट ऑफ कोर्ट ॲक्ट खाली ॲक्शन घेवू शकता.'

6. These utterances, if held to be proved, no doubt, meet the requirements of all the three sub-clauses of Section 2(c) of the Act. The contemnor has denied the charge levelled against him. But he had the earliest

opportunity to deny the charge by reply to the show-cause notice issued by the learned Magistrate before the reference was made to this court and the record shows that show-cause notice dated 12/10/2004 was served on him by hand delivery as well as through speed post. In the said show-cause notice the charge against him was recorded as above.

. In the affidavit in reply before us the contemnor states that he received the show-cause notice and preferred not to respond to the same by appearing before the learned Magistrate and submit his reply. Para 10 of his reply reads thus:-

> "10. I respectfully submit that it is true that Show Cause Notice under Section 15 (2) of the Contempt of Courts Act was issued by the Learned Magistrate to me. However, considering my experience on the relevant date in the

> Court, I was apprehensive as to whether I will be treated with minimum respect and dignity and therefore, I did not appear before the same Learned Magistrate who issued Notice to me. I express my deep regrets for not appaering before the learned Magistrate after Notice."

. Of his own choice and under totally unwarranted, unjustified and uncalled for apprehensions he preferred not to respond to the show cause notice and, therefore, his defence for the first time before us that he did not address the court as mentioned above while in the witness box on 8/9/2004 cannot be accepted.

7. On the other hand, along with the reference, the learned Magistrate has recorded the statements of two staff members and their depositions have been reduced in writing on 23/9/2004 showing that the

above reproduced utterances were made by the respondent no.1 while in the witness box. Under the circumstances, the denial set out before us in the affidavit in reply cannot be accepted. We have noted that the respondent no.1 was appearing as the witness for the accused on 8/9/2004 in the subordinate court and the accused was represented by the defence counsel. A copy of the depositions is also forwarded along with reference and the learned Magistrate has recorded a note after the respondent no.1 answered the following questions:

> "Q. I put it to you that as per this report it is clear that the husband of Fatima committed suicide by hanging as he was fed up of cancer diseases.

Answer given by the respondent while in the witness box to this question read,

> "There is difference in the statement

> made by Fatima before the corroner and this report, hence I will have to verify the same. I will require one month to verify this.
>
> I am aware that one chapter case was filed against Narkar and others (The accused nodded his neck and gave signal to witness) I again now say that I am not aware whether any such case is filed against Mr. Narkar."

The note put up by the learned Magistrate below this reply reads thus,

> "The witness submitted that he is not having any faith in this court and he wants to move the higher judiciary making complaints against the presiding officer of this court. The witness submitted that he is not ready to give

evidence before this Court. He also submitted that this Court may initiate contempt proceedings aginst him.

Considering all these facts and circumstances it is not just and proper on my part to record the further evidence in this case."

8. In the affidavit in reply the contemnor admits that the learned Magistrate declined to continue recording the evidence any further on 8/9/2004 after the incident. He has also admitted that "some incident had taken place" while he was in the witness box. The defence taken by the respondent, therefore, cannot be accepted and we have no reasons to discard the report submitted to us. We, therefore, accept that the respondent while in the witness box on 8/9/2004 at about 3.40 p.m. in the subordinate court as stated hereinabove. The said statement tends to lower the authority of the court and

it tends to obstruct the process of administration of justice.

9. In the premises, we hold the respondent no.1 guilty of the charge of contempt within the meaning of Section 2(c) of the Act and as reported by the subordinate court while he was in the witness box on 8/9/2004.

10. However, at this stage we deem it appropriate to give some time to the contemnor so that we hear him on the issue of sentence. The affidavit in reply is merely of denial and, therefore, the respondent no.1 did not deem it appropriate at that time, perhaps to tender any apology or show remorse before us. We have now held him guilty of the charge framed against him in the reference made by the subordinate court. It would be in the interest of justice that he is given some time to apply his mind to findings recorded by us and address us through his counsel on the issue of sentence on the

next date.

Hence, S.O. To 27/9/2006.

Contemnt of Court Reference No.1 Of 2005.

Date : 28th September, 2006.

P.C.

1. After recording our reasoned order on 22/9/2006 holding Shri Nikhil Wagale guilty of contempt within the meaning of Section 2(c) of the Contempt of Courts Act, 1971 in this reference, we had granted time to the contemnor to hear him on his defence on the issue of punishment to be awarded. Mr. Patil the learned counsel appearing for the contemnor has placed before us written submissions and on perusal of the same we find that the wirten submissions are by and large on the lines of the affidavit in reply filed in the contempt petition. The written submissions impliedly state that the contemnor should not be punished because there

were justificable reasons for him to engage himself in the utterances, while in the witness box, before the learned Magistrate and it further proceeds to state that the behaviour of the learned Magistrate provoked him to come out with these utterances.

2. Section 12 of the Contempt of Courts Act, 1971 provides for punishment for contempt of court and subsection (1) therein states that a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. Whereas below the said subsection the proviso states that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court. The explanation below subsection (1) provides that an apology shall not be rejected merely on the ground that it is qualified or

conditional if the accused makes it bona fide. Having regards to the proviso of the explanation below subsection (1) of Section 12 we had granted some time to the contemnor after we passed our order on 22/9/2006 holding him guilty of contempt so as to provide him an opportunity to purge the contempt. There is no apology whether qualified or conditional before us today submitted by the contemnor and on the other hand there is an attempt to defend his behaviour. While considering the issue of punishment we are aware of the observations made by Lord Atkin in Andre Paul vs. Attorney General of Trinidad (AIR 1936 PC 141) and as noted below:-

> "Justice is not a cloistered virtue : she must be allowed to suffer the scrutiny and respectful even though out-spoken comments of ordinary

men. We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the Court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct....."

3. In our reasoned order we have already held that the

explanation furnished by the contemnor leading to his utterances while in the witness box or the alleged failure on the part of the learned Magistrate to come to his defence to protect him from the questions being put by the Advocate of the complainant are no grounds to support or justify or neglect the utterances in terms of the allegations made against the learned Magistrate and these allegations cannot be treated to be against an individual but against the chair and in terms the institution.

4. Having regards to the obtaining circumstances and the restraint that we are required to exercise while awarding the punishment, we are of the view that it would be proper to punish the contemnor by imposing fine instead of awarding him sentence of simple imprisonment.

5. We, therefore, punish Shri Nikhil Wagale by imposing a fine of Rs.500/- and he shall remit this amount with the court below (the Court which has made this reference) within a period of eight weeks from today and in default thereof he will suffer simple imprisonment for a day.

(Naresh H. Patil, J.) (B.H. Marlapalle,J.)